

47th MEETING
OF THE
MARYLAND HEALTH CARE COMMISSION

Thursday, June 19, 2003
Minutes

The Commission held a Work Session from 10:15 a.m. until 12:05 p.m. at which matters related to the Small Group market and the Comprehensive Standard Health Benefit Plan were discussed. The Work Session was followed by the monthly meeting of the Commission. Chairman Wilson called the meeting to order at 12:05 p.m.

Commissioners present: Beasley, Chase, Crofoot, Etheredge, Ginsburg, Row, and Salamon. Commissioners Malouf and Jensen's absences were excused.

ITEM 1.

Approval of Minutes

Commissioner Ernest Crofoot made a motion to approve the Minutes of the May 16, 2003 meeting of the Commission, which was seconded by Commissioner Evelyn Beasley, and unanimously approved.

Closed Session

Commissioner Constance Row made a motion, which was seconded by Commissioner Ernest Crofoot, for the Commission to go into closed session for the purposes of receiving advice of counsel. The statutory authority for closing the meeting is *Code of Maryland*, State Government Article, §§ 10-508(a) (7) and (a) (8). The vote to adopt the motion was unanimous, with Commissioners Donald E. Wilson, Evelyn T. Beasley, Ernest B. Crofoot, Lynn Etheredge, Larry Ginsburg, Constance Row, and Stephen J. Salamon voting. Present at this session were Commissioners Wilson, Beasley, Crofoot, Etheredge, Ginsburg, Row, and Salamon, Executive Director Barbara G. McLean, Deputy Director Pamela W. Barclay, Deputy Director Ben Steffen, Deputy Director Enrique Martinez-Vidal, Assistant Attorney General Joel Tornari, Assistant Attorney General Fred Ryland, and Health Planner and Policy Analyst Karen Rezabek. Commissioner Etheredge made a motion to end the closed session at 12:47 p.m., which was seconded by Commissioner Row, and unanimously approved by the Commissioners.

The Commission meeting reconvened at 12:52 p.m. Commissioner Walter Chase attended the remainder of the meeting.

ITEM 2.

Update on Commission Activities

- Data Systems and Analysis
- Health Resources
- Performance and Benefits

Ben Steffen, Deputy Director of Data Systems and Analysis, said that the update for his division was on pages one through three of the written *Update*.

Enrique Martinez-Vidal, Deputy Director of Performance and Benefits, referred the Commissioners to the Performance and Benefits section of the *Update of Activities* for further information on the status of his division's projects.

Pamela Barclay, Deputy Director of Health Resources, referred the Commissioners to the Health Resources section of the *Update of Activities*. Copies of the *Update* were available on the documents table and on the Commission's website at: <http://www.mhcc.state.md.us/mhccinfo/cmsnmtgs/updates/>.

ITEM 3.

ACTION: CERTIFICATE OF NEED

- **Waldorf Health Care, Docket No. 02-08-2099**
- **Kessler Adventist Rehab Hospital, Docket No. 02-15-2096, Exceptions Hearing**

Waldorf Health Care, Docket No. 02-08-2099

Chairman Wilson announced that Rhoda Wolfe-Carr, Health Policy Analyst, would present a Certificate of Need application for action. Ms. Wolfe-Carr said that BSS Holdings, Inc., d/b/a Waldorf Health Care Center, located in Waldorf, Charles County, Maryland applied for CON approval to expand its current comprehensive care facility (CCF) bed complement of 59 beds to be housed within its existing facility. It proposed to implement this project by converting 22 assisted living units in its newer wing, previously constructed to meet CCF semi-private room requirements, and the twelve assisted living units in the older portion of the building, large enough only to be private rooms, by phasing-in the CCF beds as the rooms become available. The State Health Plan for Facilities and Services chapter for long term care, COMAR 10.24.08, finds that there is maximum need for 76 CCF beds in Charles County through the year 2005. Staff recommended that the Commission approve the CON application to expand the existing CCF bed complement at Waldorf Health Care Center by 56 new CCF beds, with the conditions that Waldorf Health Care Center accepts that all patient rooms have no more than two (2) beds; and that the Center must provide documentation, prior to licensure certification, that it has written transfer and referral agreements with facilities, agencies, and organizations that provide outpatient, adult day care, home health, aftercare, and other alternative treatment programs appropriate to the types of patients it serves. Ms. Wolfe-Carr introduced Waldorf's counsel, Howard Sollins, and its consultant, Andrew Solberg, to the Commission. Commissioner Larry Ginsburg made a motion to approve the CON, which was seconded by Commissioner Beasley, and unanimously approved.

ACTION: The CERTIFICATE OF NEED for Waldorf Health Care Center, Docket No. 02-08-2099, is hereby APPROVED with conditions.

Kessler Adventist Rehab Hospital, Docket No. 02-15-2096

Exceptions Hearing

Chairman Wilson said that Kessler-Adventist Rehabilitation Hospital submitted an application for a Certificate of Need to relocate 22 special hospital-rehabilitation hospital beds. These beds had been temporarily delicensed in 2001 and remained in good standing at the time Kessler-Adventist submitted a letter of intent to file its application for Certificate of Need. The National Rehabilitation Hospital participated

in the review as an interested party, opposing the application.

Commissioner George Malouf served as the Reviewer in this matter. On May 28, Dr. Malouf issued his Recommended Decision, in which he recommended that the Commission approve Kessler-Adventist's application to relocate the 22 special-hospital-rehabilitation beds to form a "hospital-within-a-hospital" at Washington Adventist Hospital.

The National Rehabilitation Hospital filed exceptions to the recommended decision and Kessler-Adventist filed a response to the exceptions.

The Commission heard oral argument on the exceptions. The interested party in this review, National Rehabilitation Hospital (NRH), through its counsel, Barry Rosen, argued that Kessler-Adventist's application for CON was deficient in meeting several of the review criteria: the need for 22 comprehensive inpatient rehabilitation (CIR) beds; availability of more cost-effective alternatives to the relocation and re-implementation of the 22 beds, the viability of Kessler's proposal, and deficiencies in the application to prove that Kessler would meet all of the review criteria set forth in COMAR 10.24.01.08G(3).

The applicant, Kessler-Adventist Rehabilitation Hospital, through its counsel, Howard Sollins, argued that NRH offered no substantive information that the relocation of the 22 beds already in the Commission's inventory should be blocked due to any material or substantial harm that the relocation would cause.

Following the argument, Commissioner Row presented the Recommended Decision for Commissioner Malouf, who could not attend the meeting. Commissioner Malouf found that in admitting NRH as a party to this matter, he rejected the central assertion made by NRH that Kessler-Adventist's application is for "new" service, noting that it seeks to relocate existing beds. Commissioner Malouf recommended that the Commission approve the application for CON for Kessler-Adventist Rehabilitation Hospital to relocate 22 CIR beds to Washington Adventist Hospital (WAH), with one condition related to the number of beds that may be licensed and Medicare-certified to operate within the distinct and separate "hospital within a hospital" that the Kessler-Adventist satellite at WAH will represent. Commissioner Row made a motion that the Commission approve the Recommended Decision, which was seconded by Commissioner Beasley. Following discussion, Commissioners Beasley, Chase, Etheredge, Ginsburg, Row, and Salamon voted to approve the CON, and Commissioner Crofoot voted not to approve the CON.

ACTION: The CERTIFICATE OF NEED for Kessler Adventist Rehab Hospital, Docket No. 02-15-2096 is hereby APPROVED.

ITEM 4.

ACTION: Recommendations of the Steering Committee on the Interventional Cardiology Subcommittee Report

Chairman Wilson said that the next agenda item was Commission action on the recommendations from the Interventional Cardiology Subcommittee of the Advisory Committee on Outcome Assessment in Cardiovascular Care. Pamela Barclay presented the recommendations. The Interventional Cardiology subcommittee chaired by David O. Williams, M.D. met five times between September 2002 and April 2003. The Committee considered the limited exemption policy permitting hospitals without on-site cardiac surgery back to perform primary angioplasty for patients with acute ST-segment elevation myocardial infarction under the C-PORT project; the requirement for on-site cardiac surgical backup for elective angioplasty; the appropriateness of considering a pilot research project to study the safety and efficacy of elective angioplasty

without on-site cardiac surgery backup; and the recommended minimum utilization threshold for elective angioplasty. The steering committee endorsed the subcommittee's recommendations.

Commissioner Crofoot made a motion that the Commission approve the committee's recommendation regarding primary PCI programs, including the limited exemption policy permitting hospitals without on-site cardiac surgery backup to perform primary angioplasty for patients with acute ST-segment elevation MI under the protocols of the C-PORT project; and the requirement for on-site cardiac surgical backup for elective PCI; which was seconded by Commissioner Beasley, and unanimously approved.

ACTION: Recommendations of the Steering Committee on the Interventional Cardiology Subcommittee Report regarding the provision of primary PCI programs and permission for the Executive Director to approve the C-PORT program are hereby APPROVED.

Commissioner Crofoot made a motion that the Commission approve the committee's recommendation and the process recommended by the subcommittee for considering a research proposal to study the safety of elective angioplasty in hospitals without on-site cardiac surgery backup, which was seconded by Commissioner Chase, and unanimously approved.

ACTION: Recommendations of the Steering Committee on the Interventional Cardiology Subcommittee Report regarding the process recommended by the subcommittee for considering a research proposal to study the safety of elective angioplasty in hospitals without on-site cardiac surgery backup are hereby APPROVED.

ITEM 5.

PROPOSED ACTION: COMAR 10.24.01 Certificate of Need: Definitions/Modifications

Chairman Wilson said that the next agenda item was proposed regulations that modify the existing regulations on the Determination of Certificate of Need for Health Care Facilities. Joel Tornari, Assistant Attorney General, and Pam Barclay presented the public comments from seven organizations on the proposed modifications. Ms. Barclay said that staff revised the proposed regulations following analysis of the informal comments received. Staff recommended that the Commission adopt COMAR 10.24.01, Certificate of Need: Definitions/Modifications as proposed. Commissioner Crofoot made a motion to approve the staff recommendation, which was seconded by Commissioner Row, and unanimously approved.

PROPOSED ACTION: COMAR 10.24.01 Certificate of Need: Definitions/Modifications are hereby approved as proposed permanent regulations.

ITEM 6.

NOTICE on New Hospital Measures – AMI and Obstetrics

Chairman Wilson announced that Jean Moody-Williams, Chief, Facility Quality and Performance, would present recommendations for new hospital measures, AMI and Obstetrics, to be reported by the hospitals. Ms. Moody-Williams said that staff was requesting approval to release for public comment the requirements that Maryland hospitals begin collecting and reporting to the MHCC the Joint Commission on Accreditation of Healthcare Organization's (JCAHO's) core quality measures for acute myocardial infarction beginning with the first quarter of 2004. Measures will be publicly reported via the Maryland Hospital Performance Evaluation Guide following the second quarter of 2004. This requirement is consistent with Chapter 657 (HB 705) of 1999 that requires the Commission to develop and implement a system to comparatively evaluate the quality of care and performance of hospitals on an objective basis and to annually publish the summary findings of the evaluation. MHCC currently requires similar reporting for congestive heart failure

and community acquired pneumonia. The Hospital Performance Evaluation Steering Committee will also begin to evaluate currently available data from sources such as the Health Services Cost Review Commission (HSCRC) and JCAHO to develop recommendations for public reporting of obstetrical information. Commissioner Beasley made a motion that the Commission approve the release for public comment of the Notice, which was seconded by Commissioner Chase, and unanimously approved.

RELEASE for Public Comment of the NOTICE on New Hospital Measures – AMI and Obstetrics is hereby APPROVED.

ITEM 7.

PRESENTATION: *Maryland Nursing Home Occupancy Report-Fiscal Year 2001*

Meredith Frost, Health Policy Analyst, briefed the Commission on the occupancy experience (based on operating and licensed bed capacity) of Maryland nursing homes during fiscal year 2001, including data on utilization of nursing homes by payment source. Data for this report were obtained from the Commission's annual Maryland Long Term Care Survey, Fiscal Year 2001 Cost Reports from the Maryland Medical Assistance Program, and the nursing home bed inventory. Some key findings were that almost one third of Maryland nursing homes have occupancies of less than 85%. Freestanding facilities have the highest occupancy of all types at 89.32% and hospital-based skilled nursing facilities have the lowest of all types of facilities at 80.01%. The Maryland Medical Assistance Program paid for 63% of patient days in 2001. 24% of patient days were paid privately. Medicare paid for 11% of patient days. Chairman Wilson thanked Ms. Frost for her presentation.

ITEM 8.

PRESENTATION: *Statistical Brief on Organ Transplant Services and Projected Utilization and Need for New Organ Transplant Programs for Target Year 2005*

Bridget Glazebrook, health policy analyst, presented a Statistical Brief on Organ Transplant Services and the Projected Utilization and Need for New Organ Transplant Programs for Target Year 2005. Some key findings were that stem cell utilization is declining. Solid organ transplant utilization is stable and would rise dramatically if organs were available. Chairman Wilson thanked Ms. Glazebrook for her report.

ITEM 9.

PRESENTATION: Update Report on Acute Care Planning

Pat Cameron, Chief, Acute and Ambulatory Care Services and Paul Parker, Health Policy Analyst, updated the Commission on the activities of the Acute Care Hospital Planning Work Group. Staff established the Workgroup to discuss issues raised concerning the proposed revisions to the State Health Plan (SHP) chapter on acute inpatient services, COMAR 10.24.10. A preliminary draft of the proposed SHP changes, including proposed revisions to the acute care bed need projection methodology, was released for informal public comment in 2002. To date, the Workgroup has held three meetings. Issues addressed by the Workgroup included: a shift of SHP focus from system downsizing to system growth and modernization; retaining and refining the focus of balancing cost effectiveness, quality, and access, for the protection of the public interest, and development of special rules for system hospitals. Next steps include a revised draft of the proposed SHP for the Workgroup to review, release of

the draft by the Commission for formal public comment, and consideration of changes to the licensure rules. Chairman Wilson thanked Ms. Cameron and Mr. Parker for their presentation.

ITEM 10.

PRESENTATION: Financial Survey of Small Group Market Carriers — 2002

Chairman Wilson said that the next agenda item was the beginning of the annual review of the Comprehensive Standard Health Benefit Plan (CSHBP) with the report on the financial survey of carriers. Mr. Martinez-Vidal presented the findings of the survey. The report contains a summary of carrier experience for the calendar year that ended December 31, 2002 including: the number of employer groups insured; the number of lives covered; the number of policies written; member months; written and earned premium; claims incurred; administrative expenses; and loss ratios. As a result of the enactment of Chapter 93 of the Laws of Maryland 2003 (SB 477), the Commission now is responsible for evaluating the cost of the CSHBP based on a 10-percent affordability cap. This year's analysis is based on the newly established 10-percent cap, with historical data also included using a 12-percent cap. Chairman Wilson thanked Mr. Martinez-Vidal for his presentation.

ITEM 11.

Hearing and Meeting Schedule

Chairman Wilson said that the next scheduled meeting of the Maryland Health Care Commission will be on Thursday, July 17, 2003 at 4160 Patterson Avenue, Room 100, in Baltimore, Maryland at noon. There will be no meeting of the Commission in August.

ITEM 12.

Adjournment

There being no further business, the meeting was adjourned at 2:51 p.m. upon motion of Commissioner Row, which was seconded by Commissioner Beasley, and unanimously approved by the Commissioners.